APPENDIX

Osage Allotment Act

Act of June 28, 1906. (34 Stat. 539.)

An Act For the division of the lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the roll of the Osage tribe of Indians, as shown by the records of the United States in the office of the United States Indian agent at the Osage Agency, Oklahoma Territory, as it existed on the first day of January, nineteen hundred and six, and all children born between January first, nineteen hundred and six, and July first, nineteen hundred and seven, to persons whose names are on said roll on January first, nineteen hundred and six, and all children whose names are not now on said roll, but who were born to members of the tribe whose names were on the said roll on January first, nineteen hundred and six, including the children of members of the tribe who have, or have had, white husbands, is hereby declared to be the roll of said tribe and to constitute the legal membership thereof: *Provided,* That the principal chief of the Osages shall, within three months from and after the approval of this act, file with the Secretary of the Interior a list of the names which the tribe claims were placed upon the roll by fraud, but no name shall be included in said list of any person or his descendants that was placed on said roll

prior to the thirty-first day of December, eighteen hundred and eighty-one, the date of the adoption of the Osage constitution, and the Secretary of the Interior, as early as practicable, shall carefully investigate such cases and shall determine which of said persons, if any, are entitled to enrollment; but the tribe must affirmatively show what names have been placed upon said roll by fraud; but where the rights of persons to enrollment to the Osage roll have been investigated by the Interior Department and it has been determined by the Secretary of the Interior that such persons were entitled to enrollment, their names shall not be stricken from the roll for fraud except upon newly discovered evidence; and the Secretary of the Interior shall have authority to place on the Osage roll the names of all persons found by him, after investigation, to be so entitled, whose applications were pending on the date of the approval of this act; and the said Secretary of the Interior is hereby authorized to strike from the said roll the names of persons or their descendants which he finds were placed thereon by or through fraud, and the said roll as above provided, after the revision and approval of the Secretary of the Interior, as herein provided, shall constitute the approved roll of said tribe; and the action of the Secretary of the Interior in the revision of the roll as herein provided shall be final, and the provisions of the Act of Congress of August fifteenth, eighteen hundred and ninety-four, Twenty-eighth Statutes at Large, page three hundred and five, granting persons of Indian blood who have been denied allotments the right to appeal to the courts, are hereby repealed as far as the same

relate to the Osage Indians; and the tribal lands and tribal funds of said tribe shall be equally divided among the members of said tribe as hereinafter provided.

SEC. 2. That all lands belonging to the Osage tribe of Indians in Oklahoma Territory, except as herein provided, shall be divided among the members of said tribe, giving to each his or her fair share thereof in acres, as follows:

First. Each member of said tribe, as shown by the roll of membership made up as herein provided, shall be permitted to select one hundred and sixty acres of land as a first selection; and the adult members shall select their first selections and file notice of the same with the United States Indian agent for the Osages within three months after the approval of this act: *Provided,* That all selections of lands heretofore made by any member of said tribe, against which no contest is pending, be, and the same are hereby, ratified and confirmed as one of the selections of such member. And if any adult member fails, refuses, or is unable to make such selection within said time, then it shall be the duty of the United States Indian agent for the Osages to make such selection for such member or members, subject to the approval of the Secretary of the Interior. That all said first selections for minors shall be made by the United States Indian agent for the Osages, subject to the approval of the Secretary of the Interior: *Provided,* That said first selections for minors having parents may be made by said parents, and the word " minor " or " minors " used in this act shall be held to mean those who are under twenty-

one years of age: *And provided further,* That all children born to members of said tribe between January first, nineteen hundred and six, and the first day of January, nineteen hundred and seven, shall have their selections made for them within six months after approval of this act, or within six months after their respective births. That all children born to members of said tribe on and after the first day of January, nineteen hundred and seven, and before the first day of July, nineteen hundred and seven, shall have their selections made for them on or before the last day of July, nineteen hundred and seven, the proof of birth of such children to be made to the United States Indian agent for the Osages.

Second. That in making his or her first selection of land, as herein provided for, a member shall not be permitted to select land already selected by, or in possession of, another member of said tribe as a first selection, unless such other member is in possession of more land than he and his family are entitled to for first selections under this act; and in such cases the members in possession and having houses, orchards, barns, or plowed land thereon shall have the prior right to make the first selection: *Provided,* That where members of the tribe are in possession of more land than they are entitled to for first selections herein, said members shall have sixty days after the approval of this Act to dispose of the improvements on said lands to other members of the tribe.

Third. After each member has selected his or her first selection as herein provided, he or she shall be permitted to make a second selection of one hun-

dred and sixty acres of land in the manner herein provided for the first selection.

Fourth. After each member has selected his or her second selection of one hundred and sixty acres of land as herein provided, he or she shall be permitted to make a third selection of one hundred and sixty acres of land in the manner herein provided for the first and second selections: *Provided,* That all selections herein provided for shall conform to the existing public surveys in tracts of not less than forty acres, or a legal subdivision of a less amount, designated a "lot." Each member of said tribe shall be permitted to designate which of his three selections shall be homestead, and his certificate of allotment and deed shall designate the same as a homestead, and the same shall be inalienable and nontaxable until otherwise provided by Act of Congress. The other two selections of each member, together with his share of the remaining lands allotted to the member, shall be known as surplus land and shall be inalienable for twenty-five years, except as hereinafter provided.

Fifth. After each member has selected his or her first, second, and third selections of one hundred and sixty acres of land, as herein provided, the remaining lands of said tribe in Oklahoma Territory, except as herein provided, shall be divided as equally as practicable among said members by a commission to be appointed to supervise the selection and division of said Osage lands.

Sixth. The selection and division of lands herein provided for shall be made under the supervision of, or by, a commission consisting of one member

of the Osage tribe, to be selected by the Osage council, and two persons to be selected by the Commissioner of Indian Affairs subject to the approval of the Secretary of the Interior; and said commission shall settle all controversies between members of the tribe relative to said selections of land; and the schedule of said selections and division of lands herein provided for shall be subject to the approval of the Secretary of the Interior. The surveys, salaries of said commission, and all other proper expenses necessary in making the selections and division of land as herein provided shall be paid by the Secretary of the Interior, out of any Osage funds derived from the sale of town lots, royalties from oil, gas, or other minerals, or rents from grazing land.

Seventh. That the Secretary of the Interior, in his discretion, at the request and upon the petition of any adult member of the tribe, may issue to such member a certificate of competency, authorizing him to sell and convey any of the lands deeded him by reason of this act, except his homestead, which shall remain inalienable and nontaxable for a period of twenty-five years, or during the life of the homestead allottee, if upon investigation, consideration, and examination of the request he shall find any such member fully competent and capable of transacting his or her own business and caring for his or her own individual affairs: *Provided,* That upon the issuance of such certificate of competency the lands of such member (except his or her homestead) shall become subject to taxation, and such member, except as herein provided, shall have the right to manage, control, and dispose of

his or her lands the same as any citizen of the United States: *Provided,* That the surplus lands shall be nontaxable for the period of three years from the approval of this Act, except where certificates of competency are issued or in case of the death of the allottee, unless otherwise provided by Congress: *And provided further,* That nothing herein shall authorize the sale of the oil, gas, coal, or other minerals covered by said lands, said minerals being reserved to the use of the tribe for a period of twenty-five years, and the royalty to be paid to said tribe as hereinafter provided: *And provided further,* That the oil, gas, coal, and other minerals upon said allotted lands shall become the property of the individual owner of said land at the expiration of said twenty-five years, unless otherwise provided for by Act of Congress.

Eighth. There shall be reserved from selection and division, as herein provided, one hundred and sixty acres on which the Saint Louis School, near Pawhuska, is located, and the one hundred and sixty acres on which the Saint John's School, on Hominy Creek, Osage Indian Reservation, is located, said tracts to conform to the public surveys; and said tracts of land are hereby set aside and donated to the order of the Sisters of Saint Francis; and said tracts shall be conveyed to said order, the Sisters of Saint Francis, as early as practicable, by deed. There shall also be reserved from selection and division forty acres of land near Gray Horse, to be designated by the Secretary of the Interior, on which are located the dwelling houses of John N. Florer, Walter O. Florer, and John L. Bird, and said John N. Florer shall be allowed to purchase said forty acres at the appraised value placed

thereon by the Osage Allotting Commission, the proceeds of the sale to be placed to the credit of the Indians and to be distributed like other funds herein provided for.

Ninth. There shall be reserved from selection and division, as herein provided, the northeast quarter of section three, township twenty-five, range nine east, of the Indian meridian, and one hundred and sixty acres to conform to the public survey at the town of Gray Horse, including the Government doctor's building, other valuable buildings, and the cemetery, and the one hundred and sixty acres to conform to the public survey adjoining or near the town site of Hominy; said lands or tracts are hereby set aside for the use and benefit of the Osage Indians, exclusively, for dwelling purposes, for a period of twenty-five years from and after the first day of January, nineteen hundred and seven: *Provided,* That said land may, in the discretion of the Osage tribe, be sold under such rules and regulations as the Secretary of the Interior may prescribe; and the proceeds of the same under such sale shall be apportioned and placed to the credit of the individual members of the tribe according to the roll herein provided for.

Tenth. The Osage Boarding School reserve of eighty-seven and five-tenths acres and the reservoir reserve of seventeen and three-tenths acres and the agent's residence reserve, together with all the buildings located on said reservations in the town site of Pawhuska, as shown by the official plat of the same, are hereby reserved from selection and division as herein provided; and the same may be sold in the discretion of the Osage tribe, under such

rules and regulations as the Secretary of the Interior may provide; and the proceeds of such sale shall be apportioned and placed to the credit of the individual members of said tribe according to the roll herein provided for.

Eleventh. That the United States Indian agent's office building, the Osage council building, and all other buildings which are for the occupancy and use of Government employees in the town of Pawhuska, together with the lots on which the said buildings are situated, shall be sold to the highest bidder as early as practicable, under such rules and regulations as the Secretary of the Interior may prescribe; and with the proceeds he shall erect other suitable buildings for the uses mentioned, on such sites as he may select, the remaining proceeds, if any, to be placed to the credit of the individual members of the Osage tribe of Indians: *Provided,* That the house known as the chief's house, together with the lot or lots on which said house is located, and the house known as the United States interpreter's house, in Pawhuska, Oklahoma Territory, together with the lot or lots on which said houses are located, shall be reserved from sale to the highest bidder and shall be sold to the principal chief of the Osages and the United States interpreter for the Osages, respectively, at the appraised value of the same, said appraisement to be made by the Osage town-site commission, subject to the approval of the Secretary of the Interior.

Twelfth. That the cemetery reserve of twenty acres in the town site of Pawhuska, as shown by the official plat thereof, is hereby set aside and donated to the town of Pawhuska for the purposes of

sepulture, on condition that if said cemetery reserve of twenty acres, or any part thereof, is used for purposes other than that of sepulture, the whole of said cemetery reserve of twenty acres shall revert to the use and benefit of the individual members of the Osage tribe, according to the roll herein provided, or to their heirs; and said tract shall be conveyed to the said town of Pawhuska by deed, and said deed shall recite and set out in full the conditions under which the above donation and conveyance are made.

That the provisions of an act entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and six, and for other purposes," approved March third, nineteen hundred and five, relating to the Osage Reservation, pages one thousand and sixty-one and one thousand and sixty-two, volume thirty-three, United States Statutes at Large, be, and the same are hereby, continued in full force and effect.

SEC. 3. That the oil, gas, coal, or other minerals covered by the lands for the selection and division of which provision is herein made are hereby reserved to the Osage tribe for a period of twenty-five years from and after the eighth day of April, nineteen hundred and six; and leases for all oil, gas, and other minerals covered by selections and divisions of land herein provided for, may be made by the Osage tribe of Indians through its tribal council, and with the approval of the Secretary of the Interior, and under such rules and regulations

as he may prescribe: *Provided,* That the royalties to be paid to the Osage tribe under any mineral lease so made shall be determined by the President of the United States: *And provided further,* That no mining of or prospecting for any of said mineral or minerals shall be permitted on the homestead selections herein provided for without the written consent of the Secretary of the Interior: *Provided, however,* That nothing herein contained shall be construed as affecting any valid existing lease or contract.

SEC. 4. That all funds belonging to the Osage tribe, and all moneys due, and all moneys that may become due, or may hereafter be found to be due the said Osage tribe of Indians, shall be held in trust by the United States for the period of twenty-five years from and after the first day of January, nineteen hundred and seven, except as herein provided.

First. That all the funds of the Osage tribe of Indians, and all the moneys now due or that may hereafter be found to be due to the said Osage tribe of Indians, and all moneys that may be received from the sale of their lands in Kansas under existing laws, and all moneys found to be due to said Osage tribe of Indians on claims against the United States, after all proper expenses are paid, shall be segregated as soon after January first, nineteen hundred and seven, as is practicable and placed to the credit of the individual members of the said Osage tribe on a basis of a pro rata division among the members of said tribe, as shown by the authorized roll of membership as herein provided for, or

to their heirs as hereinafter provided, said credit to draw interest as now authorized by law; and the interest that may accrue thereon shall be paid quarterly to the members entitled thereto, except in the case of minors, in which case the interest shall be paid quarterly to the parents until said minor arrives at the age of twenty-one years: *Provided,* That if the Commissioner of Indian Affairs becomes satisfied that the said interest of any minor is being misused or squandered he may withhold the payment of such interest: *And provided further,* That said interest of minors whose parents are deceased shall be paid to their legal guardians, as above provided.

Second. That the royalty received from oil, gas, coal, and other mineral leases upon the lands for which selection and division are herein provided, and all moneys received from the sale of town lots, together with the buildings thereon, and all moneys received from the sale of the three reservations of one hundred and sixty acres each heretofore reserved for dwelling purposes, and all moneys received from grazing lands, shall be placed in the Treasury of the United States to the credit of the members of the Osage tribe of Indians as other moneys of said tribe are to be deposited under the provisions of this act, and the same shall be distributed to the individual members of said Osage tribe according to the roll provided for herein, in the manner and at the same time that payments are made of interest on other moneys held in trust for the Osages by the United States, except as herein provided.

Third. There shall be set aside from the royalties received from oil and gas not to exceed fifty thousand dollars per annum for ten years from the first day of January, nineteen hundred and seven, for the support of the Osage Boarding School and for other schools on the Osage Indian Reservation conducted or to be established and conducted for the education of Osage children.

Fourth. There shall be set aside and reserved from the royalties received from oil, gas, coal, or other mineral leases, and moneys received from the sale of town lots, and rents from grazing lands not to exceed thirty thousand dollars per annum for agency purposes and an emergency fund for the Osage tribe, which shall be paid out from time to time upon the requisition of the Osage tribal council, with the approval of the Secretary of the Interior.

SEC. 5. That at the expiration of the period of twenty-five years from and after the first day of January, nineteen hundred and seven, the lands, mineral interests, and moneys, herein provided for and held in trust by the United States shall be the absolute property of the individual members of the Osage tribe, according to the roll herein provided for, or their heirs, as herein provided, and deeds to said lands shall be issued to said members, or to their heirs, as herein provided, and said moneys shall be distributed to said members, or to their heirs, as herein provided, and said members shall have full control of said lands, moneys, and mineral interests, except as hereinbefore provided.

SEC. 6. That the lands, moneys, and mineral interests, herein provided for, of any deceased mem-

ber of the Osage tribe shall descend to his or her legal heirs, according to the laws of the Territory of Oklahoma, or of the State in which said reservation may be hereinafter incorporated, except where the decedent leaves no issue, nor husband nor wife, in which case said lands, moneys, and mineral interests must go to the mother and father equally.

SEC. 7. That the lands herein provided for are set aside for the sole use and benefit of the individual members of the tribe entitled thereto, or to their heirs, as herein provided; and said members, or their heirs, shall have the right to use and to lease said lands for farming, grazing, or any other purpose not otherwise specifically provided for herein, and said members shall have full control of the same, including the proceeds thereof: *Provided,* That parents of minor members of the tribe shall have the control and use of said minors' lands, together with the proceeds of the same, until said minors arrive at their majority: *And provided further,* That all leases given on said lands for the benefit of the individual members of the tribe entitled thereto, or for their heirs, shall be subject only to the approval of the Secretary of the Interior.

SEC. 8. That all deeds to said Osage lands or any part thereof shall be executed by the principal chief for the Osages, but no such deeds shall be valid until approved by the Secretary of the Interior.

SEC. 9. That there shall be a biennial election of officers for the Osage tribe as follows: A princi-

pal chief, an assistant principal chief, and eight members of the Osage tribal council, to succeed the officers elected in the year nineteen hundred and six, said officers to be elected at a general election to be held in the town of Pawhuska, Oklahoma Territory, on the first Monday in June; and the first election for said officers shall be held on the first Monday in June, nineteen hundred and eight, in the manner to be prescribed by the Commissioner of Indian Affairs, and said officers shall be elected for a period of two years, commencing on the first day of July following said election, and in case of a vacancy in the office of principal chief, by death, resignation, or otherwise, the assistant principal chief shall succeed to said office, and all vacancies in the Osage tribal council shall be filled in a manner to be prescribed by the Osage tribal council, and the Secretary of the Interior is hereby authorized to remove from the council any member or members thereof for good cause, to be by him determined.

SEC. 10. That public highways or roads, two rods in width, being one rod on each side of all section lines, in the Osage Indian Reservation, may be established without any compensation therefor.

SEC. 11. That all lands taken or condemned by any railroad company in the Osage Reservation, in pursuance of any act of Congress or regulations of the Department of the Interior, for rights of way, station grounds, sidetracks, stock pens and cattle yards, water stations, terminal facilities, and any other railroad purpose, shall be, and are hereby, reserved from selection and allotment and confirmed in such railroad companies for their use and benefit

in the construction, operation, and maintenance of their railroads: *Provided*, That such railroad companies shall not take or acquire hereby any right or title to any oil, gas, or other mineral in any of said lands.

SEC. 12. That all things necessary to carry into effect the provisions of this act not otherwise herein specifically provided for shall be done under the authority and direction of the Secretary of the Interior.

Approved, June 28, 1906.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. 1061.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

JOHN RAMSEY AND WILLIAM K. HALE.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA.

BRIEF FOR THE DEFENDANTS IN ERROR.

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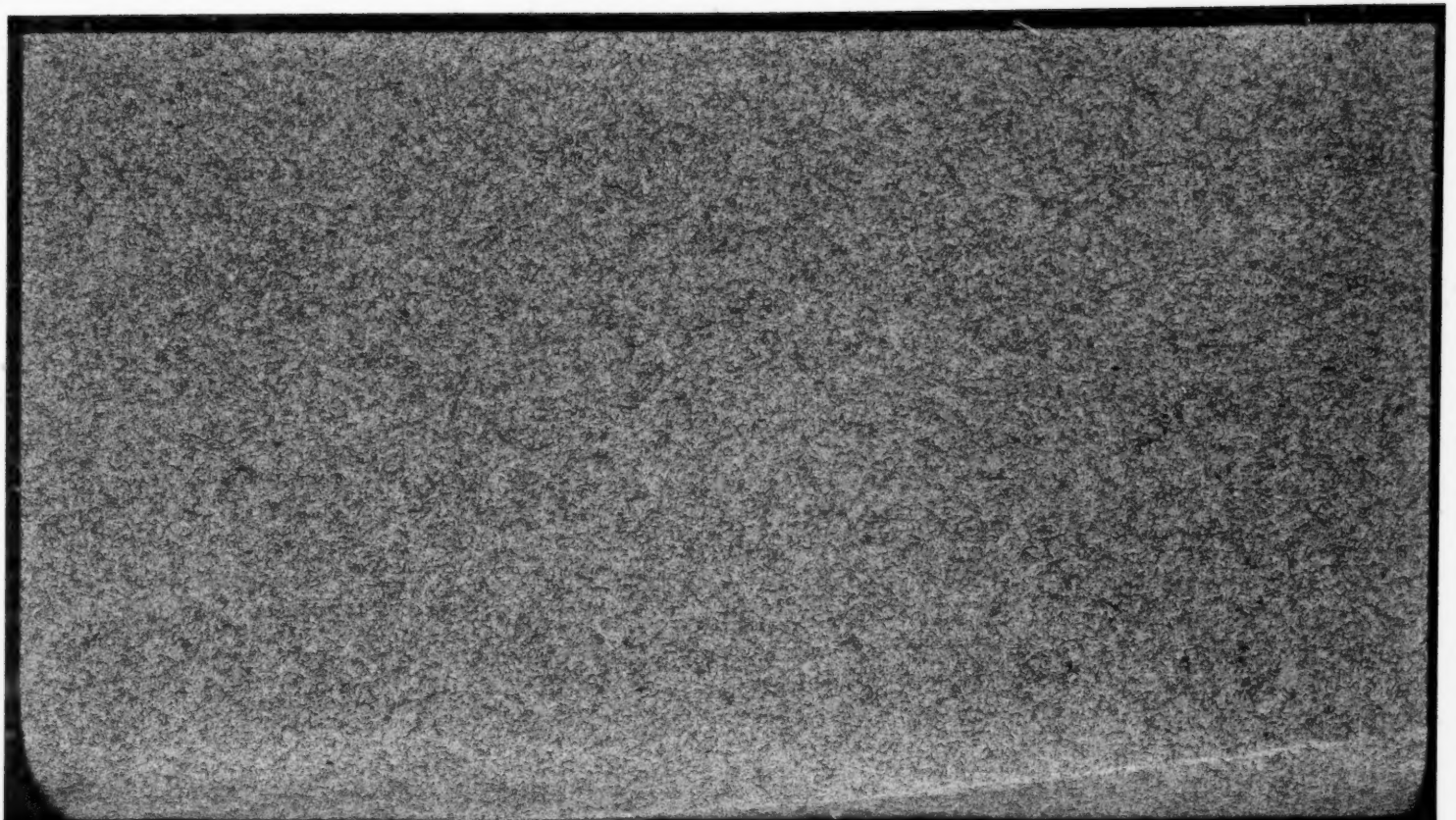

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BRIEF FOR THE DEFENDANTS IN ERROR.

Statement.

The statement of the case contained in the brief of the Government is correct in so far as statutes and other enactments therein quoted are concerned, but as we do not quite agree with some of the deductions contained in the statement, it is considered advisable to

briefly state the case and a history thereof on behalf of the defendants in error.

As nearly as practicable we shall follow the order of the Government, and first call the attention of the Court to the history of the Osage Tribe of Indians and the lands allotted to its members.

The Osage Indians were residents of a reservation in the State of Kansas. Pursuant to a treaty made with the United States Government by the Osages, and pursuant to the provisions of a treaty made with the Cherokees, dated August 11, 1866 (14 Stat. at L., 799), and pursuant to an Act of Congress approved June 9, 1872 (17 Stat. at L., 228), and an Act of Congress approved March 3, 1873 (17 Stat. at L., 530), they were removed to that territory which now comprises Osage County, Oklahoma. This land was held in trust by the United States for the purpose of deeding it in fee simple to the individual members of the Osage Tribe, pursuant to section 16 of the treaty between the United States and the Cherokee Nation, entered into on August 11, 1866 (14 Stat. at L., 799). By the terms of the Osage Allotment Act of June 28, 1906 (34 Stat. at L., 539), a tribal roll was prepared, an Allotment Commission was created, and each member of the tribe selected his individual land, each member making a first, second and third selection, the remaining land to be divided among the members equally, thus giving to each member four selections of land, one of which was to be designated a homestead, which was to be inalienable and non-taxable until Congress so provided; the other three selections were designated as surplus land, and

was inalienable for twenty-five years except when certificates of competency were issued, but the surplus land became taxable after the expiration of three years from the date of the Allotment Act. In the event of the death of the allottee, or in the event of the issuing of a certificate of competency to the allottee, the surplus land immediately became alienable.

The act further provided, in section 7 thereof, that the individual members should have full control of their land. The act further provided that deeds to said land should be executed by the Principal Chief of the Osages, and approved by the Secretary of the Interior. Under the deeds executed, fee simple title to the land was conveyed to the individual members of the Tribe.

By the Act of March 3, 1909 (35 Stat. at L., 778), the Secretary of the Interior was authorized and empowered to conduct a sale of the surplus land of any of the members of the Osage Tribe upon *application therefor by the member.*

On February 9, 1910, the Secretary of the Interior promulgated the rules by which the lands which had been deeded to the members of the Tribe could be sold under the Act of March 3, 1909. By the rules thus promulgated, and under the interpretation of the act as placed thereon by the Secretary of the Interior, the deed for conveying said land was executed by the allottee as the owner of the land, and any mortgage taken for part payment thereof was executed to the allottee as mortgagee.

Under the Act of April 18, 1912 (37 Stat. at L., 86), "the property of deceased and of orphan minor, insane and other incompetent allottees of the Osage Tribe, such incompetency being determined by the laws of the State of Oklahoma, which are hereby extended for such purpose to the allottees of such Tribe, shall, in probate matters, be subject to the jurisdiction of the county courts of the State of Oklahoma."

This act further provides that the Superintendent of the Osage Agency or the Secretary of the Interior may investigate the conduct of executors, administrators and guardians or other persons having charge of the estate of any deceased allottee or of minors or persons incompetent under the laws of Oklahoma, and when the Superintendent or Secretary deemed it to the best interest of the allottee he might appear in the county court and report any delinquency to the court, and take steps to have such case investigated, and to prosecute any remedy, either civil or criminal, the expense thereof to be a charge either upon the administrator, guardian, or person in charge, on the one hand, or on the estate of the allottee on the other hand, as the county courts of Oklahoma should determine was proper.

It is further provided in this same act that the land of deceased Osage allottees should be subject to partition in any court of competent jurisdiction, in accordance with the laws of the State of Oklahoma.

In 1918, due to the fact that various towns were springing up in Osage County, Oklahoma, and that in many instances the most suitable and appropriate

place for the location of the town was a homestead allotment, Congress passed another act by the terms of which it was provided that the allottees of the Osage Nation might change the present designation of homestead to an equal area of their unincumbered surplus land, under such rules and regulations as the Secretary of the Interior might prescribe. After the change and designation, each tract should take the status of the other as it existed prior to the change and designation, as to alienability, taxation or otherwise. This act further provided that on proper application of an Osage allottee, he might be permitted to sell any of his land, whether surplus or homestead (34 Stat. at L., 541).

By the Act of March 3, 1921, the Osage Mineral Reservation was extended from April 7, 1931, to April 7, 1946. This act further provided a more definite scheme for the payment of taxes of certain Osage minor allottees and others, and in section 5 thereof, authorized the State of Oklahoma to levy and collect a gross production tax upon all oil and gas produced in Osage County. Section 3 of the Act of 1921 declared all the members of the Tribe to be citizens of the United States.

By Act of February 27, 1925, provision was made for making land or town property purchased with funds of non-competent members of the Tribe, inalienable without the consent of the Secretary of the Interior. This Act further provided, by section 4 thereof, for the revoking of certificates of competency of certain classes of members of the Osage Tribe.

The treaties, statutes and enactments above described embody all the legislative history necessary for the Court to consider in this case.

The defendants, John Ramsey and Wm. K. Hale, were charged in the indictment with having committed on February 26, 1923, the murder of Henry Roan, a full blood Osage Indian; it was alleged that the crime was committed in Osage County, Oklahoma, on the surplus allotment of Rose Littlestar, or Tom-pah-pe, a restricted Osage allottee whose land was held in trust by the United States and was under the exclusive jurisdiction of the United States.

The deceased, Henry Roan, was a member of the Osage tribe of Indians, to whom the Secretary of the Interior has issued a certificate of competency.

We call attention here to section 2145 of the Revised Statutes 1878, and section 272 and section 273 of the Penal Code, as follows:

Section 2145 of the Revised Statutes of the United States provides as follows:

> "Except as to crimes the punishment of which is expressly provided for in this Title, the general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country."

Section 272 of the Criminal Code provides:

> "The crimes and offenses defined in this chapter shall be punished as herein prescribed
> * * *

> Third. When committed within or on any lands reserved or acquired for the exclusive use of the United States and under the exclusive jurisdiction thereof. * * *"

Section 273 of the Criminal Code provides:

> "Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or by any other kind of wilful, deliberate, malicious and premeditated killing; or committed in the perpetration of or attempt to perpetrate any arson, rape, burglary, or robbery; or perpetrated, from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed is murder in the first degree. Any other murder is murder in the second degree."

When the indictment was returned the defendants filed demurrers to the indictment, which will be found on pages 4 and 5 of the record, and which demurrers were sustained by the court for the reason stated in its order, beginning on page 5 of the record. It will be observed that the Court sustained the demurrers for the reason that the allotments to the Osages * * * were not trusts, but restricted allotments; that the title had passed out of the United States; that the allotment of Rose Littlestar was not held in trust by the United States, and for this reason, although inalienable, was not Indian country at the date of the alleged offense. (Rec., 7.)

While the contention may be stated in various ways, the only real question before the Court is whether or

not the lower court erred in sustaining the demurrers of the defendants to the indictment returned against them, for the reason stated.

We trust the Court will not consider as bad taste the excerpts from opinions contained herein. We have embodied them that the Court may have them in convenient form if needed.

ARGUMENT.

THE POWER OF THE COURTS OF THE UNITED STATES TO PUNISH A PERSON FOR AN ACT UPON A TRIBAL INDIAN OR OTHER PERSON IS LIMITED TO THE ACTS WHICH CONGRESS HAS DECLARED TO BE AN OFFENSE AGAINST SOME LAW OF THE UNITED STATES AND PROVIDED A PUNISHMENT THEREFOR.

Under this proposition we will discuss the first proposition of the Government in its brief, which is as follows:

> "The power of the United States to punish offenses committed upon the person of Tribal Indians is not based on exclusive territorial sovereignty, and is not limited by the state of the title of the land on which the offense is committed."

Congress is the only branch of the Government which has the power to define an act as an offense against the laws of the United States. Until Congress has so enacted, no offense has been committed against the laws of the United States, for there are no common

law crimes against the United States, and statutes creating and defining crimes are not to be extended by intendment because the court thinks that the Legislature should have made them more comprehensive.

United States *v.* Wetzel, 246 U. S., 533; 62 L. Ed., 872.

Kriechman *v.* U. S., 256 U. S., 363; 65 L. Ed., 992.

United States *v.* Hudson, 7 Cranch, 32; 3 L. Ed., 259.

United States *v.* Britton, 108 U. S., 193; 27 L. Ed. 701.

The courts of the United States will not extend the question of their jurisdiction to punish crimes unless that jurisdiction can be found in some express provision of the law applicable thereto. If there is a doubt as to the jurisdiction, it will be resolved in favor of the defendants. The offense must be found in an appropriate Act of Congress, and before a defendant can be punished, his case must be plainly and unmistakably within the statute.

United States *v.* Brewer, 139 U. S., 278; 35 L. Ed., 190.

United States *v.* Dietrich, 126 Fed., 676.

United States *v.* Martin, 176 Fed., 110.

The Constitution of the United States is a grant of power to the Congress of the United States to enact laws within its limits, and under the provisions of Article 10 of the Amendments to the Constitution, un-

less the power is expressly granted to Congress, the right to enact laws to punish murder is necessarily reserved to the states.

Wilkerson *v.* Rahrer, 140 U. S., 545.
Civil Rights Cases, 109 U. S., 3.

In the argument under the Government's Proposition 1, it is said:

> "The question here presented is not one of power but one of intention. The power of the United States to define and punish crimes committed upon the person or property of a Tribal Indian exists without regard to the place where the crime is committed."

The statement is further made that this power exists because the Indians are wards of the United States. The Government's attorneys cite the cases of United States *v.* Kagama, 118 U. S., 375; 30 L. Ed., 228, and United States *v.* Thomas, 151 U. S., 577; 38 L. Ed., 276.

In the Kagama case, the court was called upon to construe the provisions of section 9 of the Act of March 3, 1885 (23 Stat. at L., 385), wherein it was made a crime for one Indian to commit murder upon another Indian, upon an Indian reservation situated wholly within the limits of a State, and making such Indian so committing such crime subject to the same laws and subject to be tried in the same courts and in the same manner, and subject to the same penalties as all other persons committing the crime of murder on territory within the exclusive jurisdiction of the United States. In this case the court rehearsed the

history of the Indian reservation upon which the alleged crime was committed, and pointed out that it was land bought by the United States from Mexico by the Treaty of Guadalupe Hidalgo, and that the whole of California, with the allegiance of its inhabitants, many of whom are Indians, was transferred by that Treaty to the United States. The court pointed out that by this enactment a new departure was intended by Congress, and to go further than any law had theretofore gone, by including such crimes on an Indian reservation, and making them punishable by the United States. It was contended that this was a limitation upon the powers of the States, and in answer to this, the court said:

> "The statute itself contains no express limitation upon the power of a State or the jurisdiction of its courts. If there be any limitation in either of these it grows out of the implication arising from the fact that Congress has defined a crime committed within the State and made it punishable in the courts of the United States, but Congress *has* done this, and *can* do it with regard to all offenses relating to matters to which the Federal authority extends. Does that authority extend to this case?
>
> "It will be seen at once that the nature of the offense (murder) is one in which most all cases of its commission is punishable by the laws of the State and within the jurisdiction of their courts. The distinction is claimed to be that the offense under the statute is committed by an Indian, that it is committed on a reservation set apart within the State for residents of a tribe of Indians by the United States, and the fair

> inference is that the offending Indian shall belong to that or some other tribe. It does not interfere with the process of the State courts within the reservation, nor with the operation of State law upon white people found there. Its effect is confined to the acts of the Indians of some tribe, of a criminal character committed within the limits of the reservation."

The Court, in the language of Mr. Justice Miller, forcibly pointed out that these people were communities dependent upon the United States for their food and their political rights. It was said that they owe no allegiance to the States and receive from the States no protection, and in such a situation, in the language of the Court, "there arises the duty of protection, and with it, the power."

These Indians lived upon a reservation set apart for them. They had no rights under the laws of the State, and were wholly dependent upon the United States, and the United States owed a duty to them, and the power went with the duty. Congress in that case had passed a law which specifically applied to the offense of one Indian against another, committed within the limits of the reservation on which they alone lived and over which the State of California had no jurisdiction or control, and exercised no political rights.

In the case of United States *v.* Thomas, supra, one Indian was under prosecution charged with having killed another Indian within the La Court Oreilles Reservation in the State of Wisconsin, which was set apart for the exclusive use of the Chippewa Tribe of

Indians. Michael Thomas, the defendant, was prosecuted under section 9 of the Act of March 3, 1885 (23 Stat. at L., 385). In passing upon the question this Court, speaking through Mr. Justice Field, said:

> "The Indians of the country are considered as wards of the Nation, and whenever the United States set apart any lands of their own as an Indian reservation, whether within a State or Territory, they have full authority to pass such laws and authorize such measures as may be necessary to give to these people full protection in their persons and property, and to punish all offenses committed against them or by them within such reservations."

It will thus be noted that this Court said in both of these cases that Congress had authority to pass the law under which the defendant in each case was being prosecuted, but this Court gave no suggestion that the trial court would have had any jurisdiction to try the defendant if there had not been a specific act of Congress applicable to the offense.

The Thomas case, also quoted from the Kagama case to the effect that the Indians under consideration were "communities dependent on the United States, dependent largely for their daily food, dependent for their political rights. They owe no allegiance to the states, and receive from them no protection." In other words, the status of the Indian tribes in the Kagama case and in the Thomas case was one wholly dependent upon the Government, owing no allegiance to the State within which the reservation was situated, and receiving no

reciprocal protection therefrom. Such is not the status in the case at bar . The Osages are citizens of the State of Oklahoma. The land upon which the crime is alleged to have been committed is subject to the jurisdiction of the courts of the State of Oklahoma in probate matters and in civil and criminal matters. It is subject to taxation by the authorities of the State of Oklahoma. Henry Roan, for whose alleged murder the defendants are being prosecuted, was a citizen of the State of Oklahoma. He was subject to pay taxes upon his real estate within the State, upon his personal property; to pay road and other head tax, and every other form of taxation that any other citizen of the State of Oklahoma pays. He was qualified to institute any suit within the courts of the State of Oklahoma, or to be sued therein with reference to his property rights or his social or domestic relations. He was subject to jury service. He was a qualified voter under the laws of the State of Oklahoma. He was protected by the police power of the State of Oklahoma. He was subject to all of the criminal laws of the State of Oklahoma. In other words, he had exactly the same civil, social and political status that every other citizen of the State of Oklahoma had. No act of Congress exempted him from any of the duties of citizenship of the State of Oklahoma, or denied him any of its privileges, or its protection.

Act of June 28, 1906 (34 St. at L., 539).
Act of April 18, 1912 (37 St. at L., 86).
Act of March 3, 1921 (41 St. at L., 1249).
Act of June 16, 1906 (34 St. at L., 267).
Act of May 8, 1906 (34 St. at L., 182).
14th Amendment, Constitution of U. S.

The Government on page 13 of its brief says:

> "The decision of the District Court seems to have been influenced by the idea that the power of the United States to punish offenses against tribal Indians is in some way dependent upon the title to the land on which the offenses are committed.
>
> "The question here presented is not one of power, but one of intention. The power of the United States to define and punish crimes committed upon the persons or property of tribal Indians exists without regard to the place where the crime is committed."

These statements find no support in the enactments of Congress, nor in the decisions of this Court. On the contrary, this contention of the Government was overruled by this Court in the case of Louie *v.* United States, 254 U. S., 548; 65 L. Ed., 399. In that case Louie, an Indian, was indicted under section 273 of the Penal Code in the United States District Court for Idaho, for the murder of another Indian within the limits of the Cœur D'Alene Reservation. He was convicted and, by a motion in arrest of judgment, he objected to the jurisdiction of the court over his person and over the crime charged, on the ground that before the time of the alleged offense he had been declared competent, and that the land on which the crime was alleged to have been committed had been allotted and deeded to him in fee simple. The motion was overruled, and on appeal to the Circuit Court of Appeals of the Ninth Circuit, it held that the appeal could only

be to the Supreme Court, and dismissed the writ of error. The Supreme Court granted a writ of certiorari, and in disposing of the case, said:

> "We have no occasion to consider the question on which the Circuit Court of Appeals was divided. The motions made by the defendant in the District Court raised a question not of the jurisdiction of that court, but of the jurisdiction of the United States. The contention was, in essence, that, by reason of the facts set forth in the motions the defendant was, in respect to the acts complained of, subject to the laws of the State of Idaho, and not to the laws of the United States. In other words, that he did not violate the laws of the United States. The defendant, in effect, denied that the killing was, in the statutory sense, within the Reservation. If this was true, an essential element of the crime against the United States was lacking; as much so as if it had been established in United States *v.* Sutton, 215 U. S. 291, 54 L. Ed. 200, or in United States *v.* Soldani, 246 U. S. 530, 62 L. Ed. 870, that the region into which liquor was introduced was not Indian country. The case was reversed and sent back to the Circuit Court of Appeals for a determination of the case on its merits."

The lower court thereupon decided the case on its merits, and sustained the contention of Louie, the defendant, reversed the District Court of Idaho, and directed that he be discharged. In the statement of the case as made by the Circuit Court of Appeals, 274 Fed., 47, it is pointed out that the person whom Louie

was charged with having murdered was a Cœuer D'Alene Indian, and a ward of the United States. It is further pointed out that Louie himself was a member of the same tribe of Indians, by reason of the fact that he then and there had in common with all other members of said tribe an interest in certain tribal funds thereafter to be disbursed to the members of said tribe including Louie. In the Louie case, this Court held that notwithstanding the fact that the victim of the alleged crime was a ward of the Government, the power of the United States District Court to punish the commission of the crime was dependent upon the fact of its having been committed on an Indian Reservation.

In the discussion of the Government's Proposition 1, it is said that "the Osage Allotment Act did not, as in Section 6 of the General Allotment Act of February 8, 1887, provide that upon the patenting of the lands to the Indians they 'shall have the benefit of and be subject to the laws, civil and criminal, of the State' in which they reside."

The Osages were not subject to the General Allotment Act, but by the terms of the Osage Allotment Act of 1906 (34 St. at L. 539), and by the terms of the Oklahoma Enabling Act (34 St. at L., 267), and by the terms of the amendment to the Osage Allotment Act of April 18, 1912 (37 St. at L., 86), and by the terms of the further amendment thereof of March 3, 1921 (41 St. at L., 1249), all of the rights, duties, privileges and obligations of citizenship were conferred upon and given to the members of the Osage Tribe of Indians,

and by specific terms, the jurisdiction of the courts of the State of Oklahoma were extended over them.

THE ALLOTMENT OF ROSE LITTLESTAR FOR WHICH SHE HAD RECEIVED A PATENT IN FEE WAS NOT INDIAN COUNTRY AT THE TIME OF THE COMMISSION OF THIS ALLEGED OFFENSE, WITHIN THE PURVIEW OF SECTION 2145, REVISED STATUTES, OR ANY OTHER SECTION OF CHAPTER 4 OF THE ACT OF JUNE 30, 1834 (STAT. AT L., 729) RELATING TO THE GOVERNMENT OF THE INDIAN COUNTRY.

We are trying to follow the course of the brief of the Government in this brief of the defendants.

The prosecution in this case is based upon section 2145, United States Revised Statutes 1878, which statute reads as follows:

> "Except as to crimes, the punishment of which is expressly provided for in this title, the general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States except the District of Columbia, shall extend to the Indian country."

This section is a part of the statute of June 30, 1834 (4 St. at L., 729), which was enacted by Congress as "An Act to Regulate Trade and Intercourse with the Indian Tribes, and to preserve peace on the Frontiers." Section 2145, Revised Statutes, was section 25 of the act as originally passed, with the additional provision therein as follows: "Provided the same shall not extend to crimes committed by one Indian against the

person or property of another Indian." Later the provision was repealed, and section 2146 was enacted.

Revised Statutes of the United States, of 1878, contains a subdivision under the subject of "Indians." Chapter 4 of that subdivision is entitled "Government of Indian Country." The words "Indian country" are used in that chapter in twenty-three different sections. The definition of the words "Indian country," which was contained in the original Act of 1834 is omitted therefrom for the evident reason that the reviser realized that that definition was no longer applicable and could not with any appropriate reason be included in the revision. It was evidently omitted for the further reason that the use of the term "Indian country" in the twenty-three different sections develops the meaning of the term. A definition under the well established rules of lexicographers, must be both inclusive and exclusive. The use of this term in twenty-two of the twenty-three sections, shows beyond question that the surplus allotment of Rose Littlestar is not, and cannot be "Indian country" as this expression is attempted to be used in this indictment.

Indian country as defined by chapter 4 of the Revised Statutes of the United States 1878, is territory:

(*a*) In which the agent for each Tribe of Indians is authorized to sell for the Indians any * * * live stock belonging to such Indian. (Sec. 2127.)

(*b*) In which no person is permitted to trade with any of the Indians without a license therefor. (Sec. 2129.)

(*c*) In which any superintendent may refuse applications for license to trade. (Sec. 2130.)

(*d*) In which the superintendent of a district shall have the power to revoke the license of a trader who has theretofore been licensed. (Sec. 2131.)

(*e*) In which a person not an Indian cannot reside as a trader without a license. (Sec. 2133.)

(*f*) Into which a foreigner cannot go without a passport from proper civil authorities or officers of the United States commanding the nearest military post on the frontier. (Sec. 2134.)

(*g*) In which any person other than an Indian cannot receive by purchase or pledge from any Indian a gun or other weapon used in hunting, or any instrument used for domestic purposes. (Sec. 2135.)

(*h*) In which any person other than an Indian cannot hunt or trap, etc. (Sec. 2137.)

(*i*) From which any person cannot drive or remove except by the authority of the Secretary of War any domestic animal. (Sec. 2138.)

(*j*) In which every white person assaulting an Indian or other person, or in which an Indian making an asault upon a white person with deadly weapons shall be subject to prosecution in Federal courts. (Sec. 2142.)

(*k*) In which any white person committing arson, or any Indian who commits arson, shall be subject to punishment in Federal courts. (Sec. 2143.)

(*l*) Into which the general laws of the United States concerning forgery and offenses against the United States mails shall extend and subject the offender to prosecution in the Federal courts. (Sec. 2144.)

(*m*) From which the Superintendent of Indian Affairs, or other Indian officers have authority to remove persons unlawfully found therein, and in which the President of the United States has authority to direct the military forces to remove such. (Sec. 2147.)

(*n*) In which the military forces of the United States may be employed as directed by the President of the United States to perform certain duties. (Sec. 2150.)

(*o*) In which the marshal may employ a posse comitatus to assist in executing process. (Sec. 2153.)

(*p*) In which, if a white person destroys the property of a friendly Indian, he is subject to pay double damages to such Indian to whom the property damaged belonged. (Sec. 2154.)

(*q*) If the offender himself is unable to pay a sum equal to at least the value, the amount of the deficit shall be paid out of the Treasury of the United States. (Sec. 2155.)

(*r*) In which, if any Indian friendly to the United States destroys any property of anyone lawfully within such territory, or goes from such territory into any State inhabited by United States citizens, and there commits a depredation against the property of such citizens, or commits larceny of the property of such citizens, the United States shall, under process, pay to

the persons whose property has been taken its value from the funds of the Indian tribe inhabiting that country. (Sec. 2156.)

The foregoing definitions are the definitions given to the term "Indian country" in United States Revised Statutes in the above designated sections, which it will be noted are the sections immediately preceding and subsequent to Section 2145, under which the Government now attempts to say that it has jurisdiction to try the defendants, Ramsey and Hale for murder. These statutes and Section 2145 are all a part of one chapter on a general subject, and the same meaning is intended throughout when applied to the term "Indian country."

If the land described as the surplus allotment of Rose Littlestar and other full blood members of the Osage tribe is "Indian country," it is the duty of the United States to govern it as provided in all the sections of chapter 4, of the laws relating to government of Indian country. (Sec. 2127-2157, Rev. Stat. U. S. 1878.) It is common knowledge of which this Court will take judicial notice that the Government has made no effort to treat Osage County as Indian country since the admission of Oklahoma as a State of the Union.

The lands of the Osages was allotted in severalty, and deeds conveying a fee simple title were executed by the chief of the Osage tribe, and approved by the Secretary of the Interior, and delivered to the allottees, all on or before the 30th day of July, 1909. The specific land described in the indictment was so conveyed by deed executed by the principal chief of the Osage tribe

on the 20th day of May, 1909, and approved by the Secretary of the Interior on July 30, 1909. A certified copy of the deed to this land is attached to this brief as Appendix A.

The Act of June 30, 1834, was construed by this Court in Bates *v.* Clark, 95 U. S., 204, and referred to in the Government's brief on pages 17 and 19. The Court in that case, after considering various phases of the Act of 1834 as applied to the term "Indian country," said:

> "The simple criterion is that as to all the lands thus described it was Indian country whenever the Indians' title had not been extinguished, and it continued to be Indian country so long as the Indians had title to it, and no longer. As soon as they parted with the title, it ceased to be Indian country without any further act of Congress unless by the treaty by which the Indians part with their title or by some act of Congress a different rule is made applicable to the case.
>
> "In the case of Fur Company *v.* United States, 2 Pet., 358, the goods of the company had been seized for violating the law by the introduction into the Indian country of the Act of 1802. This court held that if by treaties made with the Indians after the passage of that act, their title to the region where the offense was committed, had been extinguished, it had thereby ceased to be Indian country, and the statute did not apply to it."

The court further said:

> "So, in the case of United States *v.* 43 Gallons of Whiskey, 93 U. S., 188; 25 L. Ed., 846, where the Act of 1834 was fully considered;

> while the court holds that by a certain clause in the treaty by which the *locus in quo* was ceded by the Indians, it remained Indian country until they removed from it. The whole opinion goes upon the hypothesis that where the Indian title is extinguished, it ceases to be Indian country unless some such reservation takes it out of the rule. It follows from this that all the country described by the Act of 1834 as Indian country remains Indian country so long as the Indians retain their original title to the soil, and ceases to be Indian country whenever they lose that title, in the absence of any different provision by treaty or by an Act of Congress."

In the case of United States *v.* Laribiere, 93 U. S., 188; 23 L. Ed., 846, this Court was called upon to define what constituted Indian country with reference to the introduction or possession of intoxicating liquors within the Indian country as defined and prohibited by the Act of June 30, 1834, and in passing, said:

> "Indian country as defined by the Act of 1834 was then so remote from settlements that there was no occasion to extend the prohibition to adjacent territory. This country (Indian country) has been so narrowed by excessive treaties that the white population is now all around it and regarding it with a wistful eye. It would be strange indeed, in view of this changed condition, if the commercial power lodged solely with Congress, and unrestricted as it is by State lines, did not extend to the enactment of a law to exclude spirituous liquors intended to corrupt the Indians, not only from existing Indian country, but from that which has ceased to be so by reason of its cession to the United States."

This reservation was in the State of Minnesota, and by a specific provision of the treaty between the United States and the Indians, it was provided that the United States should prohibit the introduction or sale of spirituous liquors into the Indian country, and the Court in further commenting upon the effect of this legislation, said:

> "Minnesota, instead of being injured, is benefited by this treaty. The immense tracts of valuable country formerly withdrawn from her civil jurisdiction is subject to it and her wealth and power greatly increased. Traversed by railroads built, in part at least, on lands which Congress was enabled to give by means of this treaty, the country is open to preemption and homestead settlements and sale, and will soon be occupied by a hardy and industrious people. All that the Government asks in return for this is that the ceded lands shall retain their original status so far as the introduction and sale of spirituous liquors to the Indians is concerned."

The distinction that the court makes in this case is that in defining Indian country as it relates to the prohibition against the introduction of intoxicating liquors it is not intended to extend the power or authority of the Government of the United States over the civil jurisdiction of the inhabitants of the country which is Indian country, only so far as the liquor laws are concerned, and no farther. For the same reason it cannot be contended that it is Indian country for the punishment of any crimes other than those arising out of the liquor traffic.

This Court had occasion to again define the term "Indian country" in the case of Dick *v.* United States, 208 U. S., 340, 52 L. Ed., 520, as relating to the introduction of intoxicating liquors into the Indian country. Dick was prosecuted for having introduced whiskey into the Indian country in and upon the Nez Perce Indian Reservation in Idaho. The whiskey was found in his possession, in the town of Culdesac, where the Indians' title had been entirely divested. The treaty in this case, as in the case last quoted from, also provided that the United States should protect the Indians from the introduction of intoxicating liquors into or upon their reservation, and Congress enacted appropriate statutes for that purpose. The court held the defendant was guilty, but in passing, said:

> "If this case depends entirely upon the Federal liquor statute forbidding the introduction of intoxicating drinks into the Indian country, we shall feel obliged to adjudge that the trial court erred in not directing a verdict for the defendant, for that statute when enacted, did not intend by the words 'Indian country' to embrace any part of territory in which at the time the Indians' title had been extinguished, and over which, and over the inhabitants of which, as was the case of Culdesac, the jurisdiction of the state for all purposes of government was full and complete."

The distinction is again made by this Court that land may be Indian country as regards the prohibition against the introduction of intoxicating liquors, and for no other purpose, and in this case it was Indian

country only for that purpose by reason of a treaty which made it so.

In the case of Evans *v.* Victor, 204 Fed., 361, the Circuit Court of Appeals of the Eighth Circuit, in which Oklahoma is situated, considered the question as to whether a certain drug store in the city of Muskogee, in what was originally a part of the Creek Indian Reservation, was Indian country, within the contemplation of the whiskey statute. The court, speaking through Judge Sanborn, said:

> "What, then, is Indian country? Congress, by the Act of 1834, chapter 161, 4 Stat. at Large, 729, declared that 'All that part of the United States west of the Mississippi, and not within the states of Missouri and Louisiana or the Territory of Arkansas, and also that part of the United States east of the Mississippi River and not within any state, to which the Indian title shall not have been relinquished for the purposes of this Act, be taken and deemed to be Indian country.'"

And the court, continuing, said:

> "And it has been settled by repeated and uniform decisions of the Supreme Court, from Bates *v.* Clark, 95 U. S., 204, wherein the rule was first clearly announced in 1877, to Clairmont *v.* United States, 225 U. S., 551, wherein it was re-affirmed in 1912, and it is conceded by counsel for the defendants (who were officers of the United States seeking to enforce the liquor statute) that the criterion by which to determine whether a specific tract of land, or location, is in the Indian country is that all the

> country described by the Act of 1834 as Indian country remains Indian country as long as the Indians retain their original title, and in the absence of a different provision by a treaty or an Act of Congress, ceases to be Indian country whenever that title is extinguished. Dick *v.* United States, 208 U. S., 340. Legislation and adjudications and their history from which this criterion has been deducted, are recited in the opinions in the cases which have just been cited, and it would be a futile task to repeat them here."

Further, the court said:

> "Counsel maintains that this land is Indian country because Congress has continued in force the tribal organization and government of the Creek Nation, and maintained an Indian agent for the conduct of the business of that Tribe, because many members of the Tribe remain under the general guardianship of the Government, and the latter holds three million dollars in trust for that Tribe, but it would be flying in the face of a long line of uniform decisions of the Supreme Court to make these facts the criterion of Indian country, and to hold this land to be Indian country, which, by the criterion established by the Supreme Court, the extinction of the original Indian title, is not Indian country, and this court declines so to do."

The same court, in the case of United States *v.* Myers, 206 Fed., 387, considered the question as to whether or not the land embraced in the Rainy Mountain Indian School, in the Kiowa Indian Reservation in Okla-

homa, was Indian country as defined by the Act of 1834. The Government alleged that the Rainy Mountain School was Indian country, and sought to recover a penalty against an Indian trader who had returned to the land embraced in this Indian school, after being ejected therefrom, upon the theory that section 2148 of the Revised Statutes, which was simply a modification of section 2 of the Act of August 18, 1856, which was passed as a supplement to the Act of 1834, and the court said that whatever was Indian country within the meaning of the Act of 1834, was Indian country within the meaning of section 2148 as originally enacted. The question, therefore, resolved itself as to what was Indian country within the meaning of the Act of 1834, and the court, in passing, said:

> "Indian country, therefore, is, as conclusively appears from all the cases, a country to which the Indians retain the right of use and occupancy, involving under certain restrictions, freedom of action and of enjoyment in their capacity as a distinct people, unless by virtue of some reservation expressed at the time of extinguishment of such title and clearly appearing. In the absence of such, the term does not apply to any tract owned and controlled by the Government and devoted by it, whereas a so-called reservation, or a mere foundation, to the benefit of the Indian exclusively or otherwise unattended by any semi-independent use and occupancy involving such title, ownership and control as has always inhered in the Indians as a distinct people, and not merely as individual wards. *In re* Lelah-Puc-Ka-Chee, 98 Fed., 429, Benson *v.* United States, 44 Fed., 178. Whether

a reservation for any purpose affecting Indians is of a character sufficient to stamp such land as Indian country within the meaning of the law, must depend upon the scope and purpose of the act creating it and the nature of the title, use and occupancy now held, exercised and enjoyed.

"In United States *v.* Celestine, 215 U. S., 278, the Supreme Court said: 'the word "reservation" has a different meaning, for while the body of land described in the section quoted as Indian country, was a reservation, yet a reservation is not necessarily Indian country. The word is used in the Land Law to describe any body of land, large or small, which Congress has reserved from sale for any purpose. It may be a military reservation or an Indian reservation, or indeed, one for any purpose for which Congress has authority to provide.' It follows that this setting apart of a limited tract of the public domain for a school which the Government devotes mainly, or even entirely, to the training and education of Indian children attending in their individual capacity, could not operate to convert that tract into Indian country as defined in the statute invoked by plaintiff in error. Many cases may be found which recognize the right of the Government to preserve or extend the limits of Indian country and the forms of law applicable thereto, in the case of land to which the Indians' title has in other respects been extinguished.

United States *v.* 43 Gallons of Whiskey, 93 U. S., 188.

Dick *v.* United States, 208 U. S., 340.

Hallowell *v.* United States, 221 U. S., 317.

> Others declare the right to prohibit the sale of liquor to Indians who are wards of the Government and in charge of Indian Agents. Mosier *v.* United States, 198 Fed., 54; United States *v.* Holliday, 3 Wall., 407, and still others recognize the power of Congress under the Commerce clause, to prohibit shipments of liquor in what was formerly known as the Indian Territory. United States Express Company *v.* Friedman, 191 Fed., 673, *Ex Parte* Webb, 225 U. S., 663. Nothing herein is in conflict with the view expressed in these cases. They serve largely to emphasize and confirm the distinction we have drawn. None of them either involve or support the contention that tracts such as this are Indian country as defined in this statute."

In the case of Clairmont *v.* United States, 225 U. S., 551, 56 L. Ed., 1201, this Court reviewed the conviction of the plaintiff in error in the district court of Montana, on a charge of introducing intoxicating liquor into the Flathead Indian Reservation in that State. The defendant in the case had some whiskey in his possession while on a train of the Northern Pacific Railway Company running through the Reservation. It was conceded, and this Court held, that the railroad owned the title to its right of way in fee by grant from Congress. This Court, in reversing the case, said:

> "The question, then, is, whether a person having intoxicating liquor in his possession on a railway train running on this strip can be deemed to have introduced the liquor into the Indian country within the meaning of the Act

> of 1897. Was this Indian country so that the District Court of the United States can be said to have had jurisdiction of the alleged offense?"

The Court then quotes the definition of Indian country from the Act of June 30, 1834, 4 Stat. at Large, 729, and said:

> "This portion of the Act of 1834 was not reenacted in the Revised Statutes as other parts of the statute were, and hence was repealed by Section 6596 of the revision of the United States Compiled Statutes 1901, page 3750, but as has frequently been stated by this court, the definition may still be referred to in connection with the provisions of its original text which remains in force and may be considered in connection with the changes which have taken place, with a view of determining from time to time what must be regarded as Indian country where it is spoken of in the statutes. *Ex Parte* Crow Dog, 109 U. S. 556, United States *v.* Le Bris, 121 U. S. 278."

The Court then quotes with approval the criterion applied by Justice Miller, in Bates *v.* Clark, 95 U. S., 204, and continuing, said:

> "It must be assumed that in the Act of 1897, Congress used the words 'Indian country' in the accepted sense, and this is confirmed by the provision bearing witness to the policy which had been adopted, looking to the dissolution of tribal relations, and the dissolution of tribal property in separate allotments. Thus the Act provides that the term 'Indian country' shall include any allotment while the title to the same shall be

held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States. United States *v.* Sutton, 215 U. S., 291; Halloweil *v.* United States, 221 U. S., 317. That the effect of a cession by the Indians might be qualified by stipulation and treaty that the ceded territory although within the boundaries of a state, should retain its original status of Indian country so far as the introduction of intoxicating liquor into it was concerned, was decided in United States *v.* 43 Gallons of Whiskey, 93 U. S., 188, but as was pointed out in Bates *v.* Clark, that decision proceeded upon the hypothesis that when the Indians' title was relinquished it ceases to be Indian country unless some such reservation takes it out of the rule. The same principle of decision was recognized in Dick *v.* United States, 208 U. S., 340, already quoted from. In the present case there was no provision either in the treaty with the Indians or by Act of Congress which limited the effect of the surrender of the Indians' title. The Indians' title or right of occupation was extinguished without reservation, and the relinquished strip came under the jurisdiction of the then Territory, and later under that of the State of Montana. It was not unappropriated public lands or land owned or held by any Indian or Indian Tribe. Our conclusion must be that the right of way had been completely withdrawn from the reservation by the surrender of the Indians' title, and that in accordance with the repeated ruling of this Court, it was not Indian country, and the district court therefore had no jurisdiction of the offense, and the judgment must be reversed."

All of the cases above cited which define Indian country, with the exception of the Myers case, 204 Fed., 364, were liquor cases, and construed either the provisions of the Act of 1834, or the express provision of the Act of January 30, 1897, and the cases construing the Act of January 30, 1897, do so by simply giving effect to the explicit definition of the term "Indian country" as enacted by Congress, to apply alone to violations of the law arising under the liquor statute.

The indictment in the case at bar is based upon and written from the case of the United States *v.* Pelican, 231 U. S., 442, 58 L. Ed., 676. In that case the defendant, Sam Pelican, was charged with having committed murder of one Louie, a full-blood Indian and a member of the Colville Tribe, on the allotment of one Agnes, an Indian, said land being then held in trust by the United States for the said Agnes for a period of twenty-five years from the date of the trust patent, December 6, 1909. It was charged that the offense was committed on August 30, 1913. It was stipulated by the parties on the hearing on the demurrer in the court below in that case, that the land described in the indictment had been alloted to the Indian allottee, Agnes, under an act approved February 8, 1887. Section 5 of that act reads as follows:

> "That upon the approval of the allotments provided for in this act, by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottee, which patent shall be of the legal effect and declare that the United States does and will hold the land thus allotted for the period of twenty-five years in trust for

> the sole use and benefit of the Indian to whom such allotment shall have been made, or in case of his decease, of his heirs."

Section 8 of that act, as far as applicable, reads:

> "That the provisions of this act shall not extend to the territory occupied by the Osages in the Indian Territory." (24 Stat. at Large, 388.)

The Act of February 8, 1887, *supra*, was amended by the Act of May 8, 1906, 34 Stat. at Large, 182. This amendment, among other things, reads as follows:

> "That until the issuance of fee simple patents, the allottees to whom trust patents shall hereafter be issued, shall be subject to the exclusive jurisdiction of the United States."

In the Pelican case reference is made to the Act of May 8, 1906, and the offense named in the indictment was charged to have been committed on the 30th day of August, 1913, on a tract of land held in trust by the United States, under an allotment made pursuant to the Act of February 8, 1887, as amended by the Act of May 8, 1906.

In this case there was no appearance in this Court for the defendant in error, Sam Pelican. It was not called to the attention of this Court that there was a distinction between land held in trust by the United States for an Indian as applied to the words "Indian country" and the expression used in the liquor statute of 1897. The decision was rendered therein because

the land was held in trust, and because, pursuant to the amendment of May 8, 1906, the allottees and their lands were expressly made subject to the exclusive jurisdiction of the United States. We have no fault to find with the decision in the Pelican case in so far as it was necessary to pass upon the question before the court. The land upon which the crime was alleged to have been committed was Indian country because the original Indian title had not been extinguished. The allottee, Louie, had been given a trust patent, which simply entitled him to the use of the land, but did not convey to him the original Indian title thereof. The original Indian title was held by the Government in trust, and the same measure of title was retained by the Government when it allotted this particular tract to Louie. It was also Indian country under the express provisions of the Act of May 8, 1906, *supra*, and remained Indian country until the issuance of a fee simple patent.

On page 22 of the Government's brief it is stated—"Every reason advanced in United States *v.* Pelican, *supra*, in support of the view that trust allotments are Indian country, applies with equal force to restricted allotments," but counsel for the Government do not support this statement with any authority and they further overlook the fact that Congress has never, by any enactment, provided that lands to which a fee simple title may be conveyed to the Indian but held under restriction, was Indian country, as it did in the Act of May 8, 1906, with reference to lands held in trust, which was also the evident intention of Congress in the General Allotment Act of February 8, 1887. If Con-

gress had thought that it could retain exclusive jurisdiction and control over allotted lands to which the title in fee simple had been conveyed to the allottee, it certainly would have said so, in definite terms, as it did with reference to the trust allotments. Or it would have so said as it did in the Act of January 30, 1897, relating to the introduction of intoxicating liquors into the Indian country.

In the Pelican case, which was not briefed by the defendant in error, there is certain language quoted from the liquor statute of January 30, 1897, which would seem to say that land allotted to an Indian remains Indian country until the expiration of the trust period, or as long as there are restrictions upon alienation. This language was not necessary or applicable in the case, for the reason that the allotment of Agnes, upon which the crime in that case was alleged to have been committed, was held in trust by the Government under the express provisions of the Act of February 8, 1887, as amended by the Act of May 8, 1906, and therefore, by the very terms of the act as amended, was under the exclusive jurisdiction of the United States, and for the further reason that the language with reference to allotments upon which the restrictions of alienation had not been removed, is taken from the statute which was passed expressly for the purpose of protecting the Indian against the use of intoxicating liquors, and was not passed as an amendment to or an extension of section 2145. And even if the court should consider that the reference by the court in the Pelican case, to the Act of January 30, 1897, was relevant, it

could have no bearing upon the determination of the question at bar, for the reason that Congress passed an Act on March 2, 1917, making Osage County, Oklahoma, Indian country, within the meaning of the Act of Congress, making it unlawful to introduce intoxicating liquors into the Indian country, and not for any other purpose, so that Osage County could not be considered Indian country for other purposes because it was not considered Indian country by Congressional interpretation under the Act of January 30, 1897; otherwise there was no occasion to enact the law of March 2, 1917.

Another case cited in the Government's brief, and upon which it seems to depend is the case of Donnelly *v.* United States, 228 U. S., 243, 57 L. Ed., 820. The locus of the crime in the Donnelly case was the Hoopa Valley Indian Reservation in the State of California, which had been validly set apart as an Indian Reservation under the Act of 1864. It had not been segregated into individual allotments by trust patents, certificates of allotment or otherwise; consequently, the original Indian title was undisturbed and unextinguished, and was, therefore, Indian country and under the exclusive jurisdiction of the United States.

Another case cited in the Government's brief is that of United States *v.* Celestine, 215 U. S., 278, 54 L. Ed., 195. In this case the defendant, Bob Celestine, an Indian, was prosecuted by indictment for having committed the crime of murder of Mary Chealco, an Indian woman, within the Tulalip Indian Reservation in the State of Washington. He was not prosecuted under

section 2145, but under section 9 of the Act of March 3, 1885 (23 Stat. at Large, 385), which statute gives to the United States exclusive jurisdiction over the prosecution of any Indian committing the crime of murder against the person of another Indian or other person within the limits of an Indian Reservation. The decision of that court did not, and necessarily could not, determine any question relating to what is or what is not Indian country within the meaning of Revised Statutes 2145. In the Tulalip Reservation the land was not conveyed to the members by restricted allotment in fee, but the members of the tribe were given trust allotments. It was contended that the special jurisdiction of the United States was taken away by the giving of the trust allotment. In passing upon this point, the court said:

> "The condition of the treaty with the Omahas made by reference a part of the treaty with the Tulalip Indians, providing for only a conditional alienation of the lands, makes it clear that the special jurisdiction of the United States has not been taken away."

The court further comments in the Celestine case, upon the fact that the allottees would not become subject to the State laws until the trust period had expired and they had been given a title in fee simple as provided in the Act of May 8, 1906.

The case of United States *v.* Thomas, 151 U. S., 577, is referred to in the Government's brief. We have heretofore analyzed that case, and think it unnecessary to make any further comment thereon, except to say

that the prosecution was based on the same statute and the allotments were made under the same law as in the Celestine case.

The cases of United States *v.* Sandoval, 231 U. S., 28; United States *v.* Soldani, 246 U. S., 530; Townsend *v.* United States, 265 Fed., 519, and Pronovost *v.* United States, 232 U. S., 48, are cited in the Government's brief and relied upon as authority for their contention in this case. An examination of these cases discloses that they are liquor introducing cases, and that they neither throw an informing light on the question before the court, nor do they assist the court in any way in determining what is Indian country within the meaning of section 2145, Revised Statues, and the related sections.

The Government, in its brief, on pages 13 and 14, say:

> "The effect of the admission of the State was, therefore, to limit the application of the criminal laws of the United States, which had been extended by section 2145, to all persons in the Indian country, to those cases where Congress has the constitutional power to punish offenses committed in places over which the State and Federal Government exercised concurrent jurisdiction within their respective spheres. No longer was an offense committed by a white man upon a white man in the Osage Reservation, punishable under the laws of the United States."

The Government cites in support of this statement, Draper *v.* United States, 164 U. S., 240, and United States *v.* McBratney, 104 U. S., 621. These cases do

not construe section 2145, Revised Statutes, but construe section 9 of the Act of Congress of March 3, 1885 (23 Stat. at Large, 385), and the decisions in these cases are based upon the reason that the statute does not cover offenses committed by white men against white men or against Indians.

Section 2145, by its terms, applies to all persons alike. It will be observed in this case that the defendants, Ramsey and Hale, are both white men, citizens of the State of Oklahoma, and amenable to all her laws.

It is said on page 18 of the Government's brief, that Congress has not thought it necessary to make any new definition of Indian country. Yet since 1834 a large body of laws has been in existence applicable to Indian country. And men have been punished by death, by fine and by imprisonment, of whom the court who so punished them, had no jurisdiction if the offenses were not committed in the Indian country.

We cannot agree with this. Every cited and reported case of conviction, develops that the offense was either on an Indian reservation, or under some treaty or valid law impressing the locus of the offense as Indian country, and following a valid law providing a punishment for the offense. But the court will find no case of a sustained conviction where the offense occurred on a parcel of ground which had once been a part of a reservation, and where the Indian title had been extinguished and supplanted by a restricted allotment of land in fee. And if custom throws a helpful light on the problem, then we point out that this is the first time since Oklahoma was admitted into the Union as a State,

that the Federal courts have asserted jurisdiction over offenses committed against competent Indians under such circumstances and on such land. It is idle to say there have not been such offenses. Outside of the land allotted to the Five Civilized Tribes, and other Indians throughout Oklahoma, and throughout the Nation, there are in Osage County alone, approximately six hundred thousand acres of restricted Indian property, which comprises nearly one-half of Osage County, the remainder of the county not being restricted, all intermingled. How many crimes, of larceny, bigamy, assault and murder have occurred thereon no one can say. That the State, since statehood, has asserted and maintained its jurisdiction over crimes against her laws in such territory cannot be denied in the face of her penitentiary records; that the Federal Government has asserted jurisdiction cannot be affirmed, in the silence of her records. And this for the good and sufficient reason that the Indian is a citizen. He pays taxes, gross production and *ad valorem*, by express permission of the Congress of the United States and the laws of Oklahoma. His failure to pay such taxes would result in the taking of the title to his property by the State of Oklahoma, and, in such a situation, the title to the land which is now contended to be Indian country would be vested in another under the processes of the laws of Oklahoma. Would it then be Indian country? We dare to say that an investigation would disclose the fact that this very allotment of Rose Littlestar, upon which this offense is alleged to have been committed, was sold for taxes under the laws of Oklahoma. As

he pays taxes for the support of the Government, he is entitled to and receives the support and protection of that Government. He is a voter, and votes at all elections in Oklahoma. (Sec. 1, Art. 3, of the Constitution.) He is liable for jury service. (Sec. 3523, Compiled Statutes of Oklahoma, 1921); he presides in the courts; he represents his county or district in the State Legislature, and his district and State in the Congress of the United States. If necessary, his land is partitioned in the local courts; for proper causes, and on proper grounds, he is granted a divorce by the laws of Oklahoma, and the deceased in this very case was a divorced husband under the laws of the State of which he was a full citizen. He has every burden any other citizen has, and every right and duty of the citizen are his. And this is never true when the land is held in trust by the United States, or where he resides on an Indian Reservation.

United States *v.* Rickert, 188 U. S., 432, 47 L. Ed., 532.

United States *v.* McCurdy, 264 U. S., 483, 68 L. Ed., 802.

Bluejacket *v.* Johnson County, 5 Wall., 737, 18 L. Ed., 667.

McCulloch *v.* Maryland, 4 Wheat., 316, 4 L. Ed., 579.

Choate *v.* Trapp, 224 U. S., 665.

Congressional Interpretation.

It is our contention that Congress itself has interpreted the meaning of the act in question, and has indirectly said that it has not the meaning now contended

r by the Government. The Act of Congress of June 30, 1834, used the expression "Indian country." This was a general expression. And by sections 20 and 21 thereof it was made an offense to sell or manufacture intoxicating liquors in such country. In 1887, and again in 1892, Congress amended these sections, and extended their application beyond the original limits of the Indian country, and made them apply to disposing or giving or selling any intoxicating liquor to any Indian under charge of an Indian Superintendent, or who attempted to or did introduce intoxicating liquors into the Indian country. By this amendment, Congress distinguished between an Indian under the supervision of an Indian agent on the one hand, and Indian country on the other hand. On January 30, 1897, Congress passed a specific liquor statute, and did not include within its terms any other offense, or make the expressions used therein cover geographically any other statute in existence. (29 St. at Large, 506.) In this special liquor statute, making it an offense to introduce intoxicating liquor into the Indian country, it was provided, as will be seen, that this term "shall include any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottees without the consent of the United States." This was perfectly within the power of the United States to enact under the Commerce clause of the Constitution.

In the case of Morgan *v.* Ward, 224 Fed., 698, it was held that this was an amendment and did not create any new offense outside of the liquor statutes. And in

United States *v.* Wright, 229 U. S., 226, 57 L. Ed., 1160, in speaking of this act, Mr. Justice Pitney, speaking for the court, said:

> "The Act of January 30, 1897 (Chap. 109, 29 Stat. at Large, 506), while having an independent title, 'An Act to prohibit the sale of intoxicating drinks to Indians, providing penalties therefor, and for other purposes,' was manifestly intended primarily as an amendment of the Act of 1892. This appears from a comparison of the clauses defining the acts prohibited, from the circumstances that the Act of 1897 contains no provisions of its own prescribing the venue for complaints, arrests and trials, and especially from the provision of its second section 'that so much of the Act of the 23rd day of July, 1892, as is inconsistent with the provisions of this act, is hereby repealed.' The prohibition is made to apply to the sales of intoxicants 'to any Indian to whom allotment of land has been made, while the title to the same shall be held in trust by the Government or to any Indian a ward of the Government under charge of an Indian superintendent or agent, or any Indian, including mixed bloods, over whom the Government through its Department, exercises guardianship"

And the familiar prohibition of the introduction of intoxicants "into Indian country" is repeated, with the addition of the following new clause: "which term shall include any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee

without the consent of the United States." The act then provides a punishment for the offense.

Congress also understood that Osage County, Oklahoma, was not under the general criminal law involving Indian country, and on March 2, 1917, with this knowledge and this interpretation, it passed a special act applying to Osage County, which reads as follows:

> "All of Osage County, Oklahoma, shall hereafter be deemed to be Indian country within the meaning of the acts of Congress making it unlawful to introduce intoxicating liquors into the Indian country." (39 Stat. at Large, 983.)

It will thus be seen that by the Act of March 2, 1917, Congress specifically limited the expression "Indian country" with reference to Osage County, so as to make it fall only within the meaning of the acts of Congress making it unlawful to introduce intoxicating liquors into the Indian country. This was part of the General Appropriation Act for the support of the Indian Department, and was enacted by Congress with full knowledge of the preceding legislation on the subject. Our contention is that in this act, Congress for the first time fixed the status of all of Osage County as Indian country, and this only to make it apply to offenses involving the introduction or disposition of intoxicating liquors to the Indians.

Reference has been made to the case of United States *v.* Nice, 241 U. S., 591. We, ourselves, request a consideration of this case. An investigation of the case shows that the Government asserted its right to prosecute the defendant, Nice, for selling whiskey to

an allotted Indian, a ward of the Government, in Tripp County, South Dakota. It based its contention on two grounds,—first, that Congress had the right, under the commerce clause, to regulate intercourse with the Indians; second, that it had the right, because of its guardianship of the Indians. Both of these contentions were sustained, and the Act of January 30, 1897, referring to intoxicating liquor, held to be a valid exercise of power simply and wholly because of these two reasons. The Government in its argument pointed out, and the court apparently sustained the law, not as an exercise of police power, but as above stated, a valid exercise of its power under the commerce clause.

Conclusion.

We cannot close this brief without calling to the attention of the Court the far-reaching result of its decision in this case. If the United States has jurisdiction over this offense, then the State has no jurisdiction of this or any other violation of any law which the United States has made criminal and attempted to extend over such property, regardless of the legislation of the State of Oklahoma over identical offenses. Will the thousands now confined in the jails and penitentiaries of Oklahoma, under processes of her courts, be awarded writs of *habeas corpus*, or taken to Federal courts for prosecution, or go free in all cases where the statute of limitation has run in their favor? Will the State of Oklahoma be forced to cease her enforcement of the laws over restricted Indian property,

which embraces such a large part of her territory, in approximately sixty of her seventy-seven counties? Will the State have jurisdiction over a parcel of land one day, and the Federal Government over the adjoining parcel of land the next day? Will the Federal Government have jurisdiction one day and lose it the next, because of some legal change in the character of the land, resulting from the State's sovereign power to tax? Or will the State have jurisdiction today, and the Government tomorrow, because it has purchased land for the Indian and caused it to be restricted against alienation?

Sunderland *v.* U. S., 69 L. Ed., 79.
U. S. *v.* Brown, 8 Fed. (2d), 564.

While these considerations do not determine the definition of Indian country, surely it will develop a situation never intended, and wholly inconsistent with the contentions made by the Government in this case.

We respectfully submit that the action of the district court, in sustaining the respective demurrers, should be sustained.

Respectfully submitted,

J. M. SPRINGER,
Attorney for John Ramsey.
WILLIAM S. HAMILTON,
EDW. C. GROSS,
S. P. FREELING,
J. I. HOWARD,
Attorneys for W. K. Hale.

APPENDIX A.

Endorsements:

STATE OF OKLAHOMA,
Osage County, ss:

The within instrument was filed for record on the 10th day of August, 1909, at 10:00 o'clock a. m., and recorded in Book 1, A. D., on page 214.

[SEAL.] T. L. BROADDUS,
Register of Deeds.

Allotment Deed, Osage Reservation, Oklahoma.

Allotment No. 188.

Osage Indian Lands from Peter C. Bigheart, Principal Chief,

to

Tom Pah pe.

To all to whom these presents shall come, Greeting:

Whereas, The Act of Congress approved June 28, 1906, entitled "An Act for the Division of the Land and Funds of the Osage Indians in Oklahoma Territory, and for Other Purposes" (34 Stat. L., 539), provides that all lands belonging to the Osage Tribe of Indians in Oklahoma, except as herein provided, shall be divided among the members of said Tribes; and,

Whereas, Said Act of Congress further provides that all lands selected by and allotted to each member (except his homestead) shall be designated as "surplus lands"; and,

Whereas, Tom pah pe, a duly enrolled and recognized member of the Osage Tribe, has selected a homestead in accordance with law; and,

Whereas, The Osage Allotting Commission, as provided in the sixth subdivision of section 2 of the Act of Congress, has certified that the lands hereinafter deescribed constitute the surplus lands of said Tom pah pe as contemplated by said Act of Congress; and,

Whereas, Section 8 of the act provides that the deeds to said Osage lands, or any part thereof, shall be executed by the Principal Chief of the Osages, but no such deed shall be valid until approved by the Secretary of the Interior;

Now, therefore, I, the undersigned Principal Chief of the Osage Tribe of Indians, by virtue of the power and authority vested in me by said Act of Congress have granted and conveyed, and by these presents do grant and convey unto the said Tom pah pe all right, title and interest of the United States and the Osage Tribe of Indians in and to the following described lands situated in the Osage Reservation in Oklahoma, to-wit:

The East Half (E. ½) of the Southeast Quarter (S. E. ¼) of Section Thirty-three (33); East Half (E. ½ of the Southwest Quarter (S. W. ¼) of Section Thirty-four (34), Township Twenty-five (25), Range Five (5); Southwest Quarter (S. W. ¼) of Section Fourteen (14), Township Twenty-five (25), Range Six (6); Southwest Quarter (S. W. ¼), South Half (S. ½) Northwest Quarter (N. W. ¼) of Northeast Quarter (N. E. ¼) of Southeast Quarter (S. E. ¼) and Southwest Quarter (S. W. ¼) of Northwest Quarter (N. W. ¼) of Southeast Quarter (S. E. ¼) of Section Five (5), Township Twenty-six (26), Range Eleven (11); all North and

East of the Indian Base and Meridian, containing four hundred ninety-five (495) acres, more or less, according to the United States survey thereof.

To have and to hold the same unto the said Tom pah pe, her heirs, executors, administrators, and assigns forever, subject, however, to all the conditions, limitations and provisions of said Act of Congress, one of which is that all oil, gas, coal, or other minerals, covered by the lands for the selection and division of which provision is herein made, are hereby reserved to the Osage Tribe for a period of twenty-five (25) years from and after the 8th day of April, Nineteen Hundred and Six.

In witness whereof, I, Principal Chief of the Osage Tribe of Indians, have hereunto set my hand and seal this 20th day of May, 1909.

All erasures and interlineations made before signing hereof.

[SEAL.] PETER C. BIGHEART,
Principal Chief of the Osages.

Witnesses:
E. W. JERMAK,
ROBERT C. BLACK.

DEPARTMENT OF THE INTERIOR,

OFFICE OF INDIAN AFFAIRS, *July* 26, 1909.

The foregoing is respectfully submitted to the Secretary of the Interior with the recommendation that it be approved.

T. H. ABBOTT,
Assistant Commissioner.

DEPARTMENT OF THE INTERIOR, *July* 30, 1909.

The foregoing deed is hereby approved.

FRANK PIERCE,
Acting Secretary.

This is to certify that the above copy of allotment deed, Osage Reservation, Oklahoma, Allotment No. 188, Tom pah pe, is correct and agrees with the original deed on file in this agency.

F. E. BRANDON,
S. D. A. in charge Osage County.

Pawhuska, Okla., Jan. 18, 1926.